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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,514	08/18/2003	Gary E. Romes	3691-571	3823
23117	7590	12/27/2004		
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714				
EXAMINER KATCHEVES, BASIL S				
ART UNIT		PAPER NUMBER		
3635				

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/642,514

Applicant(s)

ROMES ET AL.

Examiner

Basil Katcheves

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-18 and 20 is/are rejected.
- 7) ☒ Claim(s) 4-6 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to because they contain text. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8-10, 12-18 and 20, are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,286,420 to Pharmakidis in view of U.S. Patent No. 5,365,716 to Munson.

Regarding claims 1, 15 and 16, Pharmakidis discloses an a concrete wall (fig. 5: 10) having vertically spaced supports (fig. 5: 50 & fig. 2: 22) and a fiberglass type insulation placed between the supports. Pharmakidis also discloses a membrane (fig. 5: 18; column 4, line 3) attached to the supports and covering the insulation. However, Pharmakidis does not disclose the membrane layer as being a flexible vapor sheet. Munson discloses an insulated wall having upper and lower supports (fig. 1: 16 & 18) and insulation sheets (fig. 2: 20) between with a flexible vapor barrier secured to the supports (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Pharmakidis by using the vapor barrier, as disclosed by Munson, in order to prevent the insulation from absorbing liquids.

Regarding claims 2 and 17, Munson discloses multiple sections of insulation (fig. 1).

Regarding claims 3 and 18, Munson discloses the vapor sheet as being wider than a section of insulation (fig. 1).

Regarding claim 8, Pharmakidis discloses the capability of not using an adhesive to secure the membrane (column 4, line 3).

Regarding claim 9, Pharmakidis discloses the top support as located at an upper portion of the wall and the lower support as being located at the bottom area of the wall (fig. 5).

Regarding claims 10 and 20, Munson discloses the vapor sheet as being a woven polymer based coating (fig. 1: 24; abstract).

Regarding claim 12, Pharmakidis in view of Munson discloses the basic claim structure of the instant application but does not disclose specific dimensions. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

Regarding claim 13, Munson discloses the vapor sheet as parallel to the wall (fig. 1).

Regarding claim 14, Pharmakidis in view of Munson disclose the protruding portion (Munson, face of 18) as being secured to the vapor sheet with staples, not screws. However, staples are functionally equivalent to screws, and would be an obvious variation to substitute staples for screws in instances where a more firm connection is required to secure the sheet to the supports.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,286,420 to Pharmakidis in view of U.S. patent No. 5,365,716 to Munson further in view of U.S. Patent No. 4,288,951 to Carlson et al.

Regarding claim 7, Pharmakidis in view Munson does not disclose the use of stick pins for holding the insulation. Carlson discloses the use of stick pins (fig. 2) for securing insulation. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Pharmakidis in view of Munson by using stick pins, as disclosed by Carlson, in order to better secure the insulation to the wall before the vapor sheet is attached.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,286,420 to Pharmakidis in view of U.S. patent No. 5,365,716 to Munson further in view of U.S. patent No. 4,107,887 to Wendt.

Regarding claim 11, Pharmakidis in view of Munson discloses the use of a polyethylene sheet, not a polypropylene sheet. Wendt discloses a polypropylene sheet over insulation (column 3, line 49). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Pharmakidis in view of Munson by using polypropylene, as disclosed by Wendt, as polypropylene and polyethylene are used in similar situations.

Claim Objections

Claims 4 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 5 and 6 are objected for depending from claim 4.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited patents listed on the included form PTO-892 further show the state of the art with respect to ***** in general.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (703) 306-0232. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (703) 308-0832.

BK

12/22/04


Basil Katcheves

Examiner, AU 3635